

**COX, WOOTTON, GRIFFIN,
HANSEN & POULOS LLP**
Gregory W. Poulos (SBN 131428)
Max L. Kelley (SBN 205943)
190 The Embarcadero
San Francisco, CA 94105
Telephone No.: 415-438-4600
Facsimile No.: 415-438-4601

McKASSON KLEIN & HOLMES LLP
Mark D. Holmes (SBN 156660)
600 Anton Boulevard, Suite 650
Costa Mesa, CA 92626
Telephone: (714) 436-1470
Facsimile: (714) 436-1471

Attorneys for Plaintiff
DEL MAR SEAFOODS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.

Plaintiff,

vs.

BARRY COHEN, CHRIS COHEN (aka
CHRISTENE COHEN), *in personam* and
F/V POINT LOMA, Official Number
515298, a 1968 steel-hulled, 126-gross ton,
70.8- foot long fishing vessel, her engines,
tackle, furniture, apparel, etc., *in rem*, and
Does 1-10,

Defendants.

Case No.: CV 07-02952 WHA

REQUEST FOR JUDICIAL NOTICE

Date: August 16, 2007
Time: 8:00 a.m.
Courtroom 9, 19th Floor
Hon. William H. Alsup

And Related Counterclaims

Plaintiff Del Mar Seafoods, Inc., by and through its attorneys, hereby requests the

Court to take judicial notice pursuant to Federal Rule of Evidence 201 of the following facts:

///

COX, WOOTTON,
GRIFFIN, HANSEN
& POULOS LLP
190 THE EMBARCADERO
SAN FRANCISCO, CA
94105
TEL 415-438-4600
FAX 415-438-4601

DelMarSeafoods/2594

1 1. Defendant Barry Cohen was a plaintiff in a prior civil case commenced in San
2 Luis Obispo County Superior Court entitled *Barry A. Cohen; Leonard A. Cohen; Olde Port*
3 *Inn, Inc; and Olde Port Fisheries, Inc. v. Port San Luis Harbor District*, Case No. CV
4 040897.

5 2. In that case on November 16, 2005 Defendant Barry Cohen was deposed and
6 gave testimony under oath, from which excerpts of the transcript relevant to this case are
7 attached as **Exhibit 1**.

8 3. In that case exhibits were attached to Barry Cohen's deposition, of which two
9 relevant to this case are attached as **Exhibit 2**.

10
11 Dated: July 26, 2007

COX, WOOTTON, GRIFFIN,
HANSEN & POULOS, LLP
Attorneys for Plaintiff
DEL MAR SEAFOODS, INC.

12
13
14
15
16 By: 
17 Max L. Kelley

18
19
20
21
22
23
24
25
26 COX, WOOTTON,
GRIFFIN, HANSEN
& POULOS LLP
27 190 THE EMBARCADERO
SAN FRANCISCO, CA
94105
TEL 415-438-4600
FAX 415-438-4601
28

DelMarSeafoods/2504

EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN LUIS OBISPO

BARRY A. COHEN; LEONARD A. COHEN;
OLDE PORT INN, INC.; and
OLDE PORT FISHERIES, INC.,

Plaintiffs,

vs.

PORT SAN LUIS HARBOR DISTRICT; and
DOES 1 to 50, inclusive,

Defendants.

AND RELATED CROSS-ACTION.

VOLUME III

Pages 340-523

COPY

Case No. CV 040897

DEPOSITION OF BARRY A. COHEN

San Luis Obispo, California

Wednesday, November 16, 2005

10:05 a.m. – 5:23 p.m.

Reported By: Lora L. Shoffstall, RPR, CSR 9271
File No. 206759



Jeri Cain, CSRs, Inc.
A Professional Corporation

Earning Your Trust Since 1974

San Luis Obispo · Santa Maria · Santa Barbara

1151 Leff Street · San Luis Obispo, CA 93406-1039 (805) 541-0333

P.O. Box 1871 · Santa Maria, CA 93465 (805) 928-7554

FAX (805) 541-2136 · www.MeritReporting.com 800-549-3376

1 THE DEPOSITION OF BARRY A. COHEN, VOLUME III,
2 was taken at Merit Reporting & Video, 1151 Leff Street,
3 San Luis Obispo, California, before Lora L. Shoffstall,
4 CSR No. 9271 and Registered Professional Reporter, on
5 Wednesday, November 16, 2005, commencing at 10:05 a.m.

6
7 APPEARANCES OF COUNSEL:

8 For Plaintiffs and Cross-Defendants:

9
10 MILLER, STARR & REGALIA
11 Attorneys at Law
12 BY: ARTHUR F. COON
13 1331 North California Boulevard, Fifth Floor
14 Walnut Creek, California 94596
15 (925) 935-9400

16 For Defendants and Cross-Complainant:

17 ADAMSKI, MOROSKI, MADDEN & GREEN, LLP
18 Attorneys at Law
19 BY: MARTIN P. MOROSKI
20 444 Higuera Street, Suite 300
21 San Luis Obispo, California 93401-3875
22 (805) 543-0990

23 Also Present:

24 JAY ELDER
25 LEONARD A. COHEN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESS	EXAMINED BY	PAGE
BARRY A. COHEN (Volume III)	MR. MOROSKI	344

MARKED TESTIMONY

PAGE	LINE
488	13

WITNESS INSTRUCTED NOT TO ANSWER

(None)

EXHIBITS FOR IDENTIFICATION

DESCRIPTION:	MARKED
385 - Amended Notice of Continued Deposition of Barry A. Cohen as an Individual Plaintiff and Person Most Knowledgeable of Plaintiff Olde Port Fisheries, Inc. and Request for Production of Documents at Deposition Pursuant to Stipulation	345
386 - 1994, 1997, 1999, 2002 forms 1099-MISC	356
387 - Privilege Log of Documents Withheld from Production of Schimandle and Cantrell, CPA's	388
388 - June 27, 1996, letter to Paul A. Geihs from Thomas D. Green, Re: Lease: Port San Luis Harbor District and Barry Cohen	391
389 - 1999, 2001, 2002 forms 1099-MISC	436
390 - June 12, 1996, letter to Board of Commissioners from Paul A. Geihs, Re: Olde Port Inn Restaurant and Seafood Facility Lease Agreement	399
391 - 2003 form 1099-MISC	466

I N D E X (Continued)

EXHIBITS FOR IDENTIFICATION (Continued)

DESCRIPTION:	MARKED
392 - 2004 form 1099-MISC	466
393 - Six pages; documents re Global Marine Systems (Federal) Inc.	468
394 - Uniform Residential Loan Application	471
395 - November 8, 2005, letter to Barry and Chris from John Husten, Loan Officer, on Weger Mortgage letterhead	479
396 - Uniform Residential Loan Application	485
397 - Promissory Note	509
398 - Del Mar Seafoods, Inc. Schedule of Payments	509
399 - Olde Port Fisheries, Division Income Statement for the 1 Period Ended January 31, 2003, et al.	517
400 - Privilege Log of Documents Withheld From Production of Schimandle and Cantrell (Olde Port Fisheries, Inc.)	452
401 - Year-to-Date Report, Del Mar Seafoods, Inc.	509

1 BARRY A. COHEN,
2 Plaintiff herein, having first been duly sworn,
3 was examined and testified as follows:
4

5 EXAMINATION (Resumed)

6 BY MR. MOROSKI:

7 Q. Mr. Cohen, you understand that you're under
8 oath.

9 A. Yes.

10 Q. You understand that the admonitions which I
11 gave you before the last two sessions of your
12 deposition apply to today's deposition as well?

13 A. Yes.

14 Q. Specifically, you understand that if I ask a
15 question that you don't understand for any reason, that
16 you let me know that you don't understand my question.
17 Is that acceptable to you?

18 A. Yes.

19 Q. You also understand that to the extent you
20 answer any question I pose to you today, that the
21 transcript, once ultimately prepared, is going to read
22 as though you understood my question. Do you
23 understand that?

24 A. Yes.

25 Q. And for that reason, it's extremely important

1 that's currently operating the Point Loma. Correct?

2 A. Correct. And it would be last year's income.

3 Q. Who keeps the books for the Point Loma?

4 A. I do.

5 Q. With assistance from anyone?

6 A. For the end of the year? The end-of-the-year
7 tax returns I don't do.

8 Q. That's Mr. Cantrell?

9 A. Yes.

10 Q. Mr. Coon has shown you a document. Do you
11 want to --

12 A. He wants --

13 MR. COON: This was that document that was
14 faxed by Joe Roggio during the break that Mr. Cohen
15 requested. I think we should make some copies of it
16 and give you a copy.

17 MR. MOROSKI: Sure. Can I take a look at it,
18 please?

19 Why don't we make a copy of this real quick.
20 Thanks, Jay.

21 MR. COON: Can we make two of those, Jay, so
22 we can have one for us, one for the court reporter and
23 one for you guys?

24 MR. ELDER: Okay.

25 MR. MOROSKI: Exhibits 397 and 398. Thanks,

1 Jay. Do you want to mark this next? That's 401.

2 THE WITNESS: Do you want --

3 MR. MOROSKI: Not yet. That --

4 THE WITNESS: Okay.

5 MR. MOROSKI: We'll get to that in a second.

6 (Exhibits 397-398 and 401 were marked for
7 identification.)

8 BY MR. MOROSKI:

9 Q. Can you identify Exhibit 397 for the record,
10 please?

11 A. A copy of the promissory note payable to Del
12 Mar Seafoods that I had sent to you a couple days ago.
13 I received this from requesting it from Joe Roggio.

14 Q. And the date or the effective date, I should
15 say, of this note is what?

16 A. You mean the preferred mortgage date or the
17 date signed we it?

18 Q. What is the effective date of --

19 A. It's the same date.

20 Q. Which is what?

21 A. 10/31/03.

22 Q. And directing your attention to the last page,
23 the third page of the note. Is that your signature
24 above the line "Barry Cohen"?

25 A. Yes.

1 Q. And is that Chris Cohen's signature?

2 A. Yes.

3 Q. Okay. Why was it that you were being asked to
4 sign a promissory note on October 31, 2003?

5 A. I don't know.

6 Q. Were you assessed interest under the terms of
7 this promissory note?

8 A. No.

9 Q. Why not?

10 A. I don't know.

11 Q. And with respect to the balance, principal
12 balance recited in the first paragraph of the notice,
13 \$215,000, how was that figure arrived at?

14 A. I think it was a low guess.

15 Q. A low guess?

16 A. A guess.

17 Q. Of what?

18 A. Of the money that I borrowed for the boat from
19 Del Mar. But I don't think they knew exactly how much
20 everything was.

21 Q. Directing your attention to Exhibit 398. Can
22 you identify that document for the record?

23 A. Yes.

24 Q. Would you do so?

25 A. It's a Del Mar Seafoods, Inc. schedule of

1 Q. And is that Chris Cohen's signature?

2 A. Yes.

3 Q. Okay. Why was it that you were being asked to
4 sign a promissory note on October 31, 2003?

5 A. I don't know.

6 Q. Were you assessed interest under the terms of
7 this promissory note?

8 A. No.

9 Q. Why not?

10 A. I don't know.

11 Q. And with respect to the balance, principal
12 balance recited in the first paragraph of the notice,
13 \$215,000, how was that figure arrived at?

14 A. I think it was a low guess.

15 Q. A low guess?

16 A. A guess.

17 Q. Of what?

18 A. Of the money that I borrowed for the boat from
19 Del Mar. But I don't think they knew exactly how much
20 everything was.

21 Q. Directing your attention to Exhibit 398. Can
22 you identify that document for the record?

23 A. Yes.

24 Q. Would you do so?

25 A. It's a Del Mar Seafoods, Inc. schedule of

1 payments.

2 Q. And what does the schedule of payments relate
3 to?

4 A. What I paid, what the boat owed, what
5 inventory was owed for Avila, receivable on Olde Port
6 Inn and on Michael Cohen.

7 Q. So this document, Exhibit 398, does not relate
8 to the promissory note?

9 A. Yes.

10 Q. It does?

11 A. Yes.

12 Q. Okay. How do you account for the different
13 balances?

14 A. We don't account for it.

15 Q. Okay. Can you explain to me why the principal
16 balance owed under the terms of the promissory note,
17 Exhibit 397, dated effective October 31, 2003, is
18 \$215,000, and the beginning balance reflected on this
19 schedule of payments documents is \$295,429?

20 A. Because I took the responsibility for these
21 amounts owed and just put it on mine.

22 Q. Okay. So the beginning balance does not
23 relate to the promissory note balance. Correct?

24 A. No, but it -- it relates to the promissory
25 note.

1 payments.

2 Q. And what does the schedule of payments relate
3 to?

4 A. What I paid, what the boat owed, what
5 inventory was owed for Avila, receivable on Olde Port
6 Inn and on Michael Cohen.

7 Q. So this document, Exhibit 398, does not relate
8 to the promissory note?

9 A. Yes.

10 Q. It does?

11 A. Yes.

12 Q. Okay. How do you account for the different
13 balances?

14 A. We don't account for it.

15 Q. Okay. Can you explain to me why the principal
16 balance owed under the terms of the promissory note,
17 Exhibit 397, dated effective October 31, 2003, is
18 \$215,000, and the beginning balance reflected on this
19 schedule of payments documents is \$295,429?

20 A. Because I took the responsibility for these
21 amounts owed and just put it on mine.

22 Q. Okay. So the beginning balance does not
23 relate to the promissory note balance. Correct?

24 A. No, but it -- it relates to the promissory
25 note.

1 Q. Well, I'm looking at all of these figures,
2 Mr. Cohen, and let's start with Barry, the column
3 Barry, \$237,035.48. That's the beginning balance.
4 That doesn't tie with the \$215,000 principal balance
5 owed pursuant to the terms of the promissory note.

6 A. Right.

7 Q. Okay. How does it -- how does that total
8 relate to the promissory note obligation?

9 A. I just told you that the \$215,000 was a low
10 estimate.

11 Q. Okay.

12 A. So --

13 Q. You owed money over and above the \$215,000?

14 A. Right. But we didn't know how much. This was
15 just prepared a few days ago. This -- a lot of this
16 was not known until a few days ago.

17 Q. And "this," you're referring to Exhibit 398?

18 A. Yes.

19 Q. The Michael Cohen beginning balance, what does
20 that relate to?

21 A. Money that Michael Cohen owes.

22 Q. For what?

23 A. For purchases that he made.

24 Q. Purchases of what?

25 A. Of seafood from Del Mar.

1 Q. Well, I'm looking at all of these figures,
2 Mr. Cohen, and let's start with Barry, the column
3 Barry, \$237,035.48. That's the beginning balance.
4 That doesn't tie with the \$215,000 principal balance
5 owed pursuant to the terms of the promissory note.

6 A. Right.

7 Q. Okay. How does it -- how does that total
8 relate to the promissory note obligation?

9 A. I just told you that the \$215,000 was a low
10 estimate.

11 Q. Okay.

12 A. So --

13 Q. You owed money over and above the \$215,000?

14 A. Right. But we didn't know how much. This was
15 just prepared a few days ago. This -- a lot of this
16 was not known until a few days ago.

17 Q. And "this," you're referring to Exhibit 398?

18 A. Yes.

19 Q. The Michael Cohen beginning balance, what does
20 that relate to?

21 A. Money that Michael Cohen owes.

22 Q. For what?

23 A. For purchases that he made.

24 Q. Purchases of what?

25 A. Of seafood from Del Mar.

1 Q. Okay. Olde Port Inn, what does that --

2 A. Purchases.

3 Q. Of fish?

4 A. Yes.

5 Q. Okay. Inventory, what does that relate to?

6 A. Fish and supplies.

7 Q. Point Loma, what does that refer to?

8 A. I think that was an advance or advances.

9 Q. And the Barry column, what does that beginning
10 balance number refer to?

11 A. That was probably the beginning balance of
12 where I was at the time of this promissory note.

13 Q. And the total amount, \$237,035, what does that
14 total include?

15 A. I couldn't tell you offhand.

16 Q. Advances?

17 A. At the time they were not advances, but they
18 turned into advances. This is what Joe Roggio was
19 talking about when we were going to go partners in the
20 boat, and we did a lot of work on the boat to get ready
21 for Mexico. That was going to be Joe's contribution to
22 the 50/50.

23 Q. Joe Cappuccio?

24 A. Yes.

25 Q. Okay. Now, regarding the schedule of

1 STATE OF CALIFORNIA) ss.
2 COUNTY OF SAN LUIS OBISPO)

3 I, LORA L. SHOFFSTALL, CSR #9271, RPR, State
4 of California, do hereby certify:

5 That prior to being examined, the witness
6 named in the foregoing deposition was by me sworn to
7 testify the truth, the whole truth and nothing but the
8 truth;

9 That said deposition was taken down by me by
10 stenotype at the time and place therein stated and
11 thereafter transcribed under my direction into
12 computerized transcription.

13 I further certify that I am not of counsel nor
14 attorney for nor related to the parties hereto, nor am
15 I in any way interested in the outcome of this action.

16 In compliance with section 8016 of the
17 Business and Professions Code, I certify under penalty
18 of perjury that I am a certified shorthand reporter
19 with license number 9271 in full force and effect.

20 Witness my hand this ^{10th} ~~21st~~ day of ^{July} ~~November~~,
21

2007
2005.

22 
23 LORA L. SHOFFSTALL, CSR #9271

EXHIBIT 2

11-15-2005 08:55AM FROM-DEL MAR SEAFOODS INC Om

T-131 P.003/006 F-299

PROMISSORY NOTE

For the value received, BARRY COHEN and CHRIS COHEN, an individual of 2028 Draydon Avenue, Cambria, California 93428, hereinafter referred to as maker, promises to pay to the order of DEL MAR SEAFOODS, INC., 331 Ford Street, Watsonville, California 95076, its successors and assigns, hereinafter referred to as holder, the sum of two hundred fifteen thousand (\$215,000.00) dollars at the rate of seven (7) percent per annum, as follows:

Monthly payments of \$3,000.00 or fifteen (15) percent of the gross landing receipts of each and every landing of seafood product made by the fishing vessel POINT LOMA, whichever is greater, commencing on January '04 and on the 15th day of each succeeding month until principal and interest are fully paid. Payments are to be applied to interest first.

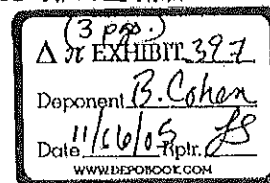
1. This promissory note is secured by a First Preferred Ship Mortgage on the vessel POINT LOMA, Official No. C.L.C. 515-298 B4A; dated 10/31/03.

2. Incorporation of Terms of First Preferred Mortgage.

This note is secured by a continuing security interest in the vessel described in a Preferred Mortgage, dated 10/31/03, executed by maker in favor of holder. The terms of that Preferred Mortgage are incorporated into this note by reference to the same effect as if set forth in this note in their entirety. On default, under Preferred Mortgage or under this note, holder may exercise any of the remedies granted by the Preferred Mortgage. Maker acknowledges that holder rights are cumulative.

3. Acceleration of Maturity.

In the event of default, in the payment of any of the installments or interest due as provided in this.



11-15-2005 08:55AM FROM-DEL MAR SEAFOODS INC On

T-131 P.005/006 F-239

note, time being of the essence, holder may, without notice or demand, declare the entire principal sum then unpaid immediately due and payable. Further, if maker should at any time fail in business or become insolvent, or commit an act of bankruptcy, or if any writ of execution, garnishment, attachment, or other legal process is issued against any deposit account or other property of maker, or if any assessment for taxes against maker, other than taxes on real property, is made by the federal or state government, or any department or agency of the federal or state government, or if maker fails to notify holder of any material change in their financial condition, all of the obligations of maker shall, at option of holder, become due and payable immediately without demand or notice.

4. Modification of Terms.

Holder may, with or without notice to maker, cause additional parties to be added to this note, or release any party, or revise, extend, or renew the note, or extend the time for making any installment provided for in this note, or accept any installment in advance, all without affecting the liability of maker.

5. Attorney's Fees.

If suit is commenced on this note, maker shall pay to holder a reasonable attorney's fee and all costs.

6. Waiver of Rights by Maker.

Maker hereby waives (a) presentment, demand, protest, notice of dishonor and/or protest, and notice of non-payment; (b) the right, if any, to the benefit of, or to direct the application of, any security hypothecated to holder until all indebtedness of maker to holder, however arising, shall have been paid; and (c) the right to require holder to proceed against any party to this note, or to pursue any other remedy in holder power. Holder may proceed against maker directly and independently of any other party to this note, and the cessation of the liability of any other party or

11-15-2005 08:55AM FROM-DEL MAR SEAFOODS INC Om

T-131 P.006/008 F-230

any reason other than full payment, or any revision, renewal, extension, forbearance, change of rate of interest, or acceptance, release, or substitution of security, or any impairment or suspension of holder's remedies or rights against any other party, shall not in any way affect the liability of maker.

DATED:

12/31/03
Barry Cohen
Chris Cohen

11-15-2005 08:55AM FROM-DEL MAR SEAFOODS INC Om

T-131 P.002/006 F-238

Del Mar Seafoods, Inc.
Schedule of Payments

	Michael Cohen	Olde Port Inn	Venue	Point Loma	Barry	Total
Beginning Balance	13,820.40	10,050.10	10,583.24	10,021.81	207,035.48	205,420.03
12/22/2004 Barry Paymt					(5,000.00)	(5,000.00)
01/24/2005 American Payment			(1,474.75)			(1,474.75)
01/14/2005 Olde Port PYMT			(1,000.00)			(1,000.00)
11/10/2004 Inv. Adj			(1,500.00)			(1,500.00)
11/10/2005 Payment from Barry	(13,420.40)	(10,060.10)	(10,000.48)	(10,021.81)	(121,350.70)	(155,000.00)
Ending Balance					111,884.78	111,884.78

